(78)

AFR

01-05-2006

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ.

WRIT PETITION No.2774 OF 2005

PETITIONERS

1. Ghasiram S/o Late Sahu,
   Aged about 40 years
2. Mankunwar, S/o Mahettar Sahu
   Aged about 60 years
3. Jagdish S/o Kamta Sahu
   Aged about 42 years
4. Tilak S/o Laldas Satnami
   Aged about 32 years
5. Joidhad, S/o Lakhan Rawat,
   Aged about 35 years
6. Parsadawa, S/o Samaru,
   Aged about 65 years
7. Rekhabai, W/o Aaju Kurmi,
   Aged about 22 years
   All above R/o Village Sankra, Tahsil Berla, Distt. Durg (C.G.)

Versus

RESPONDENTS

1. State of Chhattisgarh,
   Through : Secretary, Panchayat & Gramin Vikas Vibhag, D.K.S. Bhawan, Raipur (C.G.)
2. Upper Collector, Bemetara,
   Distt. Durg (C.G.)
3. Gram Panchayat, Sankra,
   Through its Sarpanch, namely Rameshwar Dewangan S/o Shriram Dewangan, Aged about 35 years, R/o. Vill. Sankra, Tah. Berla, Distt. Durg (C.G.)
4. S.D.O. Saja, Distt. Durg (C.G.)
5. Director of Panchayat, Raipur,
   Distt. Raipur (C.G.)

6. Bhagyashri Swayam Sahayata Samuh, Village Sankra, Through : its Secretary-Smt. Umabai, W/o Shivkumar Sharma, Aged about 40 years, R/o village Sankra, Tahsil Berla, Distt. Durg (C.G.)

Present : Shri Manoj Paranjape, learned counsel for the petitioners.
Shri Utkarsh Verma, learned Dy. G.A. for the State/respondents 1, 2, 4 and 5.
Shri H.B. Agrawal, learned Senior Advocate with Shri Pankaj Agrawal, learned counsel for respondent No. 3.
Shri Vipra Sen Agrawal, learned counsel for respondent No. 6.

ORAL ORDER
(Passed on 01st May, 2006)

The dispute brought before the Court arises out of the action of the Gram Panchayat, Sankra, the 3rd respondent herein leasing a fishing right in the tank belonging to it. The petitioners 7 in number are individual fishermen, whereas respondent 6, namely, Bhagyashri Swayam Sahayata Samuh, is a Registered Self Help Group of fishermen. There is no dispute that between the petitioners on one hand and the 6th respondent – Group on the other hand, in terms of the norms and guidelines prevailing at the relevant point of time, the 6th respondent – Group had preference compared to the petitioners in the matter of grant of fishing rights. However, the 3rd respondent, Gram Panchayat granted fishing right in favour of the petitioners overlooking the preference of the 6th respondent – Group. But, immediately after the grant of fishing right in favour of the petitioners, on a complaint lodged by 6th respondent – Group that it ought to have been granted fishing right, an enquiry was conducted by the Chief Executive Officer, Janpad Panchayat, Berla and in that enquiry it was found that three members of the 6th respondent - Group were defaulters and in that view of the matter

the decision which was already taken by the 3rd respondent to grant fishing right in favour of the petitioners was not interfered with. When the matter stood thus, the 6th respondent – Group, with considerable delay, preferred an appeal to the Sub Divisional Officer, Saja, District Durg, the 4th respondent herein calling in question the validity of the order of the 3rd respondent in granting fishing right in favour of the petitioners along with an application to condone the delay in filing the appeal. The 4th respondent having opined that no sufficient cause is shown for condoning the delay rejected the application for condoning the delay and consequently dismissed the appeal preferred by the 6th respondent, by his order dated 16-07-2004. Feeling aggrieved by the above order of the 4th respondent, the 6th respondent preferred a revision under Rule 5 of C.G. Panchayat (Appeal and Revision) Rules, 1995 (for short "the Rules") to the Additional Collector, Bemetara, District Durg, the 2nd respondent herein. The 2nd respondent by his order dated 18-02-2005 condoned the delay and further he thought it appropriate to finally dispose of the dispute on merit and accordingly heard the parties and found that the 3rd respondent – Gram Panchayat while granting fishing right in favour of the petitioners had overlooked the preference enjoyed by the 6th respondent – Group and in that view of the matter, he set aside the order of the 4th respondent and remanded the proceedings to Gram Panchayat to grant the fishing rights in accordance with law and taking into account the priorities provided under the Government orders. Hence, this writ petition.

(2) I have heard learned counsel for the copies for a considerable time. There is one area where there cannot be any dispute between the parties and in fact there is no dispute. The 2nd respondent in his order

has not considered the finding recorded by the Chief Executive Officer, Janpad Panchayat, Berla, referred to above, that the three members of the 6th respondent – Group were defaulters and therefore, denial of fishing right to the 6th respondent – Group is justified. It is true that the 6th respondent who had preferred the revision ought to have sought a decision at the hands of the 2nd respondent as to whether the above finding recorded by the Chief Executive Officer against it was justified or not. But, the order would show that this question was not pointedly urged before the 2nd respondent. Be that as it may, if really certain members of the 6th respondent – Group are defaulters, refusal of the 3rd respondent – Gram Panchayat to grant fishing right in favour of the 6th respondent – Group could not be faulted with. The 2nd respondent without deciding that material issue ought not to have remanded the proceedings to Gram Panchayat to dispose of the fishing rights afresh taking into account only the preferences and not the defaults committed by the members of the 6th respondent – Group. In that view of the matter, it becomes imperative to direct the 2nd respondent to consider first whether the finding recorded by the Chief Executive Officer, Janpad Panchayat, Berla that three members of the 6th respondent – Group are defaulters, on facts, is justified or not and only in the event of the 2nd respondent finding that the above finding of the Chief Executive Officer is not substantiated or erroneous, the 3rd respondent disposing of the fishing rights afresh would arise. In that view of the matter, I allow the writ petition and set aside the impugned order of the 2nd respondent. The proceedings shall stand remitted to the 2nd respondent with a direction to dispose of the Revision afresh in the light of this order. Due to this litigation a valuable source of revenue available to the 3rd

respondent – Gram Panchayat has been blocked. Therefore, there is a need for the 2nd respondent to dispose of the Revision without much loss of time. Accordingly, I direct the 2nd respondent to dispose of the Revision within a period of six weeks from the date of receipt of a copy of this order. The Registry is directed to send a copy of this order to 2nd respondent forthwith. No costs.

Sd/-
Chief Justice

Subbu